

ESTTA Tracking number: **ESTTA326441**

Filing date: **01/12/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91192750
Party	Defendant E & E Co., Ltd.
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Attachments	JLA Home - Answer and Affirmative Defenses (01077837).PDF (10 pages) (366725 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application No. 77/783,089

Filed: July 16, 2009

Published: October 20, 2009 in the Official Gazette

For: **WEST END**

WILLIAMS-SONOMA, INC.,

Opposer,

vs.

E&E CO., LTD. (d/b/a JLA HOME),

Applicant.

Opposition No. 91192750

ANSWER AND AFFIRMATIVE DEFENSES

Applicant E&E Co., Ltd. (d/b/a JLA Home) (“Applicant” or “JLA Home”), by its attorneys Thorp Reed & Armstrong, LLP, hereby submits this Answer and Affirmative Defenses to the Notice of Opposition (the “Opposition”) filed by Opposer Williams-Sonoma, Inc. (“Opposer” or “Williams-Sonoma”), with respect to Application Serial No. 77/783,089 (the “Application”) in the above-captioned proceedings.

ANSWER

JLA Home is without information sufficient to form a belief as to the truth or falsity of the allegations contained in the first sentence of the preamble of the Opposition, which are therefore denied in their entirety. JLA Home denies that registration of the WEST END trademark (the “Mark”) will cause any damage to Williams-Sonoma. JLA Home admits that it has a place of business at 45875 Northport Loop E, Fremont, California 94538 and that the Mark

was published in the Official Gazette of October 20, 2009. To the extent any further response is required, the allegations of the preamble are denied.

1. In response to the allegations of paragraph 1 of the Opposition, JLA Home answers that Registration No. 2,725,772 speaks for itself with respect to the mark, owner, identification and classification of goods, application date, and registration date thereof. JLA Home is presently without information sufficient to form a belief as to the truth or falsity of the allegations of the final sentence of paragraph 1, which are therefore denied in their entirety. To the extent any further response is required, the allegations of paragraph 1 are denied.

2. In response to the allegations of paragraph 2 of the Opposition, JLA Home answers that Registration No. 2,845,444 speaks for itself with respect to the mark, owner, identification and classification of goods, application date, and registration date thereof. JLA Home is presently without information sufficient to form a belief as to the truth or falsity of the allegations of the final sentence of paragraph 2, which are therefore denied in their entirety. To the extent any further response is required, the allegations of paragraph 2 are denied.

3. In response to the allegations of paragraph 3 of the Opposition, JLA Home answers that Registration No. 2,738,123 speaks for itself with respect to the mark, owner, identification and classification of goods, application date, and registration date thereof. JLA Home is presently without information sufficient to form a belief as to the truth or falsity of the allegations of the final sentence of paragraph 1, which are therefore denied in their entirety. To the extent any further response is required, the allegations of paragraph 3 are denied.

4. In response to the allegations of paragraph 4 of the Opposition, JLA Home answers that Registration No. 2,860,667 speaks for itself with respect to the mark, owner, identification and classification of goods, application date, and registration date thereof. JLA

Home is presently without information sufficient to form a belief as to the truth or falsity of the allegations of the final sentence of paragraph 1, which are therefore denied in their entirety. To the extent any further response is required, the allegations of paragraph 4 are denied.

5. In response to the allegations of paragraph 5 of the Opposition, JLA Home answers that Registration No. 2,854,307 speaks for itself with respect to the mark, owner, identification and classification of goods, application date, and registration date thereof. JLA Home is presently without information sufficient to form a belief as to the truth or falsity of the allegations of the final sentence of paragraph 1, which are therefore denied in their entirety. To the extent any further response is required, the allegations of paragraph 5 are denied.

6. In response to the allegations of paragraph 6 of the Opposition, JLA Home answers that Registration No. 3,539,865 speaks for itself with respect to the mark, owner, identification and classification of goods, application date, and registration date thereof. JLA Home is presently without information sufficient to form a belief as to the truth or falsity of the allegations of the final sentence of paragraph 1, which are therefore denied in their entirety. To the extent any further response is required, the allegations of paragraph 6 are denied.

7. Paragraph 7 of the Opposition states no allegations to which a response is required. To the extent any further response is required, the allegations of paragraph 7 are denied.

8. In response to the allegations of paragraph 8 of the Opposition, JLA Home answers that the registrations for Williams-Sonoma's alleged marks speak for themselves, as noted above in paragraphs 1 through 6. JLA Home further answers that it is presently without information sufficient to form a belief as to the truth or falsity of the allegations of the first sentence of paragraph 8, which are therefore denied in their entirety. The allegations of the

second and third sentences of paragraph 8 present legal conclusions to which no response is required. To the extent any further response is required, JLA Home further answers that it is presently without information sufficient to form a belief as to the truth or falsity of the allegations of the second and third sentences of paragraph 8, which are therefore denied in their entirety.

9. JLA Home answers that it is presently without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 9 of the Opposition, which are therefore denied in their entirety.

10. JLA Home admits that Williams-Sonoma advertises and operates through online retail websites, in catalogs, and at retail store locations. JLA Home denies that the Williams-Sonoma marks referenced in the allegations of paragraph 10 have become famous. JLA Home further answers that it is presently without information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 10 of the Opposition, which are therefore denied in their entirety.

11. In response to the allegations of paragraph 11 of the Opposition, JLA Home answers that Application Serial No. 77/783,089 speaks for itself with respect to the mark, applicant, identification and classification of goods, and application date thereof. JLA Home further answers that the facts in this regard are accurately reflected in the allegations of paragraph 11.

12. JLA Home denies the allegations of paragraph 12 of the Opposition.

13. JLA Home denies the allegations of paragraph 13 of the Opposition.

14. In response to the allegations of paragraph 14 of the Opposition, JLA Home answers that the subject identifications and classifications of goods placed at issue by

Application Serial No. 77/783,089 and the registrations asserted by Williams-Sonoma speak for themselves. JLA Home further answers that, to the extent that paragraph 14 sets forth legal conclusions, no response is required.

15. JLA Home denies the allegations of paragraph 15 of the Opposition, particularly in light of the distinct meanings of the marks.

16. JLA Home denies the allegations of paragraph 16 of the Opposition, particularly in light of the distinct meanings of the marks.

17. JLA Home denies the allegations of paragraph 17 of the Opposition.

18. JLA Home denies the allegations of paragraph 18 of the Opposition.

19. In response to the allegations of paragraph 19 of the Opposition, JLA Home answers that the allegations are denied as stated. In association with its operation of the Harbor House Inn of Elk, California, E&E Ltd. sells a limited line of bedding products under the Harbor House brand to guests at the Inn and to third party retailers, who in turn offer these products for sale to consumers.

20. JLA Home denies the allegations of paragraph 20 of the Opposition. JLA Home further refers to answer to paragraph 19, above, and incorporates that answer herein as if fully restated.

21. JLA Home denies the allegations of paragraph 21 of the Opposition.

22. JLA Home denies the allegations of paragraph 22 of the Opposition.

23. JLA Home admits that London, England, contains an area known as the West End. JLA Home answers that it is presently without information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 23 of the Opposition, which are therefore denied in their entirety.

24. JLA Home admits that it has no business location in the West End of London, England, and that its products do not originate therefrom.

25. JLA Home denies the allegations of paragraph 25 of the Opposition.

26. JLA Home denies the allegations of paragraph 26 of the Opposition.

27. JLA Home denies the allegations of paragraph 27 of the Opposition.

28. JLA Home denies the allegations of paragraph 28 of the Opposition.

29. JLA Home admits that, as reflected in the Williams-Sonoma registrations and in the Application, Williams-Sonoma and JLA Home are engaged in the distribution and sale of certain similar goods. Beyond this, JLA Home answers that it is presently without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 29 of the Opposition, which are therefore denied in their entirety.

30. JLA Home answers that, to the extent that paragraph 30 of the Opposition sets forth legal conclusions, no response is required. To the extent any further response is required, JLA Home denies the allegations of paragraph 30.

AFFIRMATIVE DEFENSES

I. JLA Home pleads that each of Williams-Sonoma's grounds for relief fails to state a claim as a matter of law, fails to state a claim upon which relief can be granted, and fails to support a refusal to register Applicant's Mark.

II. JLA Home pleads that its adoption and use of the WEST END Mark has been undertaken innocently, in good faith, and without knowledge or intent to infringe upon any of the rights of any other party.

III. JLA Home pleads that its use of the WEST END Mark has not resulted in and is not likely to result in any confusion, mistake, or deception in the relevant consumer market.

IV. JLA Home pleads that its use of the WEST END Mark has not resulted in and is not likely to result in any dilution of any mark owned by Williams-Sonoma in the relevant consumer market.

V. JLA Home pleads that Williams-Sonoma has not and will not suffer any damage or injury – whether to its sales, revenues, profits, reputation, goodwill, or otherwise – as a result of JLA Home’s valid and lawful use of its WEST END mark.

VI. JLA Home pleads that Williams-Sonoma lacks standing to assert its claim that the WEST END mark is primarily geographically deceptively misdescriptive.

VII. Subject to discovery and other investigation, JLA Home pleads that a refusal to register the WEST END mark is not supported by the registrations asserted by Williams-Sonoma to the extent that the registrations are invalid and subject to cancellation.

VIII. Subject to discovery and other investigation, JLA Home pleads that a refusal to register the WEST END mark is not supported by the registrations asserted by Williams-Sonoma to the extent that the registered marks have not become famous and/or lack distinction.

IX. Subject to discovery and other investigation, JLA Home pleads that a refusal to register the WEST END mark is not supported by the registrations asserted by Williams-Sonoma to the extent that the registered marks have been abandoned by Williams-Sonoma.

X. Subject to discovery and other investigation, JLA Home pleads that a refusal to register the WEST END mark is not supported by the registrations asserted by Williams-Sonoma to the extent that the registrations have been obtained, maintained, or preserved through fraud and deceit on the U.S. Patent and Trademark Office.

XI. Subject to discovery and other investigation, JLA Home pleads that one or more of Williams-Sonoma's grounds for relief is barred by the doctrines of waiver, estoppel, acquiescence, laches, and/or unclean hands.

XII. JLA Home pleads that Williams-Sonoma has failed to state any basis upon which the Application should be rejected or refused or upon which its Opposition to the Application should be sustained.

XIII. JLA Home pleads that, to any extent that the allegations and claims of Williams-Sonoma are not specifically admitted, denied, or responded to as set forth herein, they are hereby generally denied in their entirety.

XIV. JLA Home reserves the right to invoke any and all affirmative defenses for which a factual and/or legal basis is revealed in discovery herein or otherwise.

XV. JLA Home reserves the right to plead and assert any and all counterclaims for which a factual and/or legal basis is revealed in discovery herein or otherwise.

WHEREFORE, having fully answered the Opposition, Applicant JLA Home respectfully requests:

- 1) that the Opposition be overruled, dismissed, and/or denied in its entirety;
- 2) that judgment be entered in favor of Applicant JLA Home on each and every claim and count of the Opposition;
- 3) that a registration be issued to Applicant JLA Home for the WEST END mark, as applied for in application Serial No. 77/783,089; and
- 4) that Applicant JLA Home be granted such other and further relief as the Board deems just and proper.

Dated: January 12, 2010

Respectfully submitted:

/ J. Alexander Hershey/

Barry L. Cohen

J. Alexander Hershey

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CERTIFICATE OF SERVICE

I hereby certify that, this 12th day of January 2010, I have caused a copy of the foregoing Answer and Affirmative Defenses to be served by Electronic and U.S. Mail as follows:

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/ J. Alexander Hershey/